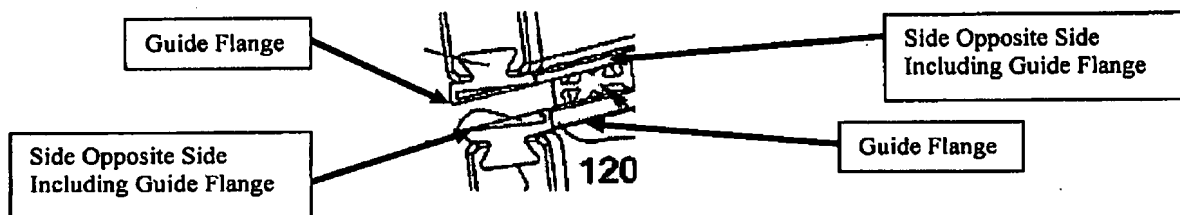


REMARKS

In the non-final Office Action mailed July 19, 2007, claims 1, 3-27, 29-40, and 49-52 were pending. Claims 11 and 27 were allowed. Claims 1, 3-9, 12-14, 17-26, 29, 37-40, 49, and 51 were rejected, and claims 10, 15, 16, 30-36, 50, and 52 were indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 1, 19, 21, 27, 40, 49 and 50 have been amended and claim 52 cancelled. Reconsideration and allowance of the subject application as amended are hereby requested.

The Examiner objected to the phrase "an instrument for inserting an instrument" in claims 19 and 27 and indicated that he believes it was meant to be an instrument for inserting an implant. The Examiner is thanked for his suggestion. Claims 19 and 27 have been amended to recite "implant" and maintain consistency with the other independent claims. Withdrawal of the objection to claims 19 and 27 is respectfully requested.

Claims 1, 19, and 21 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Regarding claims 1 and 21, the Examiner, on pages 2-3 of the Office Action, indicated he was unclear what the Applicant was trying to convey regarding the claim language of "said guide flanges are aligned with a side of the other guide member that is opposite the side of the other guide member including the guide flange." The language clearly indicates that each guide flange is aligned with a side opposite the respective side of the other guide member that includes a guide member. A portion of Figure 2 of the present application is shown below for illustrative and non-limiting purposes to show exemplary guide flanges aligned with a side of the other guide member that is opposite the side of the other guide member including the guide flange.



The examiner interpretation of the claim language is consistent with the meaning of the claim language. In order to advance prosecution, claims 1 and 21 have been amended in a non-limiting

manner to recite "wherein said guide flanges are on opposite sides of said first and second guide members" as understood by the examiner. Since the meaning of claims 1 and 21 is clear and meet the requirements of 35 U.S.C. § 112, second paragraph, withdrawal of this ground of the rejection of claims 1 and 21 is respectfully requested.

Claim 19 was rejected because of an informality. Specifically, the Office Action indicated the recital of "said first and second side" in line 7 of claim 19 was without prior antecedent basis. In view of the amendment made to claim 19 above, Applicants respectfully request removal of this ground of rejection.

Claim Rejections under 35 U.S.C. §§ 102 and 103

Claims 1, 9, 12-14, 17-21, 26, 29, and 37-40 were rejected as understood under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,758,159 to Weissman (hereafter, "Weissman"). Claim 1 includes the features of "said guide surfaces of said first and second guide members oriented toward one another, said guide flanges are aligned with a side of the other guide member that is opposite the side of the other guide member including the guide flange." The Office Action states that the "examiner believes that when the device of Weissman is viewed from the distal end the guide members from [sic] L-shapes. The examiner believes that the guide flange of one guide member is on the right side of the guide member and the guide flange of the other guide member is on the left side of the guide member." Office Action, page 4.

The "guide flanges" of Weissman are clearly aligned with each other on the same side of grasping legs 20, 48. The relationship of L-shaped grasping legs 20, 48, while obscured in Figure 2, is clearly shown in Figures 1, and 3-5 of Weissman. Weissman discloses that grasping legs 20, 48 include notches 88, 92 in inner surfaces 90, 94, respectively. Weissman further discloses that, "as can best be seen in FIG. 4, the grasping legs 20, 48 can grasp two corners of a rectangular workpiece 82 within the notches 88, 92 to assure the parallel relationship by grasping three sides of the workpiece and securing the workpiece in proper parallel relationship." Figure 3 of Weissman shows each notch 88, 92 with a hidden line, indicating that each notch 88, 92 is hidden by the "guide flange" of each of the grasping legs 20, 48. Accordingly, Weissman

discloses that each "guide flange" is located on the same side of the grasping legs 20, 48 since each hides the respective notch 88, 92 in Figure 3. This is further shown in Figure 4, where workpiece 82 is situated between grasping legs 20, 48 and each notch 88, 92 is located so that the "guide flanges" defined by notches 88, 92 extend along the back side of workpiece 82 in Figure 4. Figure 5 of Weissman with workpiece 82 removed shows notches 88, 92 opening along the same side of grasping legs 20, 48 and the "guide flanges" on the side of grasping legs 20, 48 that is opposite the side that notches 88, 92 open. Therefore, for at least these reasons, Weissman fails to disclose the elements arranged as recited in claim 1 and withdrawal of this basis of the rejection of claim 1 is respectfully requested.

Claim 9, 12-14, 17 and 18 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable. Withdrawal of this basis of the rejection of these claims is respectfully requested.

Turning to independent claim 19, its features include "said first and second guide members being movable toward and away from one another by moving said movable arm relative to said stationary arm; wherein said stationary arm and said movable arm are transversely oriented to said first and second guide members." The Office Action states "[t]he Examiner believes that the first and second guide members are transversely oriented to the surfaces of the stationary arm and the moveable arm from which the first and second guide members extend." See Office Action, page 4. Weissman discloses a body portion 16 depending from grasping leg 20, and movable jaw 14 includes a substantially rectangular body portion 44 depending from grasping leg 48. Body portions 16, 44 are elongated in the same direction along which grasping legs 20, 48 are elongated. Therefore, body portions 16, 44 are not transversely oriented to grasping legs 20, 48. Thus, Weissman does not disclose the features of claim 19 and withdrawal of this basis of the rejection of claim 19 is respectfully requested.

Claims 20-21, 26, 29, and 37 depend from claim 19 and are allowable at least for the reasons claim 19 is allowable and for other reasons. For example, claim 21 is allowable at least for the reasons provided above with respect to claim 1. Withdrawal of this basis of the rejection of these claims depending from claim 19 is respectfully requested.

Claim 38 includes the features of "said proximal ends of said guide members defining a proximal opening therebetween for receipt of an implant for positioning between said guide surfaces of said guide members." As shown in Figures 1 and 4, grasping legs 20, 48 do not define a proximal opening at their proximal ends for receipt of an implant therebetween. Rather, notches 88, 92 are each closed at the proximal ends of grasping legs 20, 48. Furthermore, guide members 24, 26 and screw member 62 are located at the proximal ends of grasping legs 20, 48 and prevent the placement of workpiece 82 between grasping legs 20, 48 from the proximal ends of grasping legs 20, 48. Therefore, withdrawal of this basis of the rejection of claim 38 is respectfully requested.

Claims 39-40 depend from claim 38 and are allowable at least for the reasons claim 38 is allowable and for other reasons. For example, amended claim 40 recites "wherein said guide members include guide flanges extending therealong adapted to confine an implant therebetween as the implant is moved along said guide surfaces, wherein each guide member includes a single guide flange and said guide flanges are on opposite sides of said first and second guide members" and is allowable for the reasons provided above with respect to claim 1. Withdrawal of this basis of the rejection of claims 39-40 is respectfully requested.

Claims 49 and 51 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0045904 to Fuss. Claim 49 has been amended to recite that the second guide member extends distally from the second arm and to include the features of claim 52. Claim 49 is believed allowable as indicated in the Office Action. Withdrawal of the rejection of claim 49 and claim 51 depending from claim 49 is respectfully requested.

Claim 50 has been rewritten in independent form and is allowable as indicated in the office action.

Claims 3-8 and 22-25 were rejected as understood under 35 U.S.C. § 103(a) as being unpatentable over the Weissman in view of U.S. Patent No. 5,431,658 to Moskovich. Claims 3-8 depend from claim 1, and are allowable at least for the reasons claim 1 is allowable. Claims 22-25 depend from claim 19 and are allowable at least for the reasons claim 19 is allowable. Withdrawal of the rejection of claims 3-8 and 22-25 is respectfully requested.

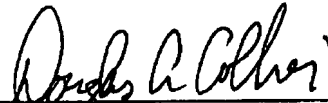
Response to Non-Final Office Action
Application Serial No. 10/680,358
Atty Docket No. MSDI-245/PC819.00
Page 14 of 15

CONCLUSION

It is respectfully submitted that the present application including claims 1, 3-27, 29-40, and 49-51 is in condition for allowance. Reconsideration of the present application in view of the foregoing amendments and remarks is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted,

By: _____



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Response to Non-Final Office Action
Application Serial No. 10/680,358
Atty Docket No. MSDI-245/PC819.00
Page 15 of 15